HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 85 OF 2007

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Between:

D. Peddabbai

.... Appellant

AND

The Syndicate Bank rep. by its
Chairman and Managing Director,
& others

.....Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri Karanam Ramesh

Dated: 31.01.2007

Per G.S.SINGHVI, CJ

This appeal is directed against order dated 09.03.2006 passed by the learned Single Judge in Writ Petition No. 1283 of 2004, whereby he rejected the appellant's prayer for issue of a mandamus to the management of Syndicate Bank (for short 'the bank') to grant him compassionate pension in terms of Regulation 31(1) of the Syndicate Bank Employees Pension Regulations, 1995 (for short 'the Regulations') and gratuity under the Payment of Gratuity Act, 1972 (for short 'the Act').

The appellant joined the service of the bank as Clerk in 1974. In due course, he was promoted as an officer in Middle Management Grade Scale I and then in Middle Management Grade Scale II. In the years 1987, 1992, 1993 and 1994, four different departmental enquiries were initiated against him and he was punished.

The particulars of the enquiries and nature of punishments are detailed below:

(i) charge sheeted on 27-7-1987 for charges of accepting bribe/illegal gratification for which he was awarded punishment of reduction in basic pay by two stages.

(ii) charge sheeted on 9-3-92 on charges of irregularities in credit portfolio and was awarded punishment of reduction ion basic pay by three stages.

(iii) charge sheeted on 3-12-1993 on charges of financial indiscipline and awarded punishment

of ‘censure’.

(iv) charge sheeted on 18-7-1994 on charges for fraud/misappropriation an was awarded punishment of ‘dismissal from service’.

In the enquiry instituted in 1994, the appellant was charged with the allegation of committing financial irregularities. At the conclusion of the enquiry, the appellant was removed from service vide order dated 29.05.1995. He did not challenge that order in any judicial proceedings, but approached the Commission for Scheduled Castes and Scheduled Tribes, which directed his reinstatement. Accordingly, the competent authority reinstated the appellant, but simultaneously ordered de novo enquiry. As a sequel to this, the appellant was dismissed from service vide order dated 09.11.1998.

It is also borne out from the record that the petitioner was prosecuted on the allegation of accepting bribe and was convicted by the Court of Special Judge, C.B.I, Visakhapatnam.

After one year of his dismissal from service, the appellant made an application for payment of gratuity. The same was rejected by the bank by invoking Section 4(6) of the Act. This was conveyed to him by Deputy General Manager of the bank vide his letter dated 15.11.1999. The appellant also submitted application dated 08.08.2001 for grant of compassionate pension under Regulation 31(1) of the Regulations. The Chief Manager of the bank rejected his prayer on the premise that he had not exercised option in terms of circular

dated 04.11.1995.

Feeling aggrieved by the rejection of his claim for gratuity and compassionate pension, the appellant filed Writ Petition No.1283 of 2004. He prayed for quashing of communications dated 15.11.1999, 31.08.2001 and also for issue of a direction to the respondents to pay him gratuity and compassionate pension in accordance with the provisions of the Act and the Regulations.

The learned Single Judge dismissed the writ petition by observing that even though the writ petitioner (appellant herein) did not get opportunity to exercise option in terms of circular dated 04.11.1995, he was not entitled to relief because he had been convicted by the Court of CBI, Visakhapatnam and dismissed from service on being found guilty of financial mis-demeanor.

Shri Karanam Ramesh, learned counsel for the appellant assailed the order under challenge and argued that the reasons assigned by the learned Single Judge for declining to entertain his client's prayer for quashing the decision of the bank not to pay him gratuity and compassionate pension are legally untenable. He submitted that the solitary reason assigned by the Chief Manager of the bank for refusing to sanction compassionate pension to the appellant is irrelevant and extraneous and the learned Single Judge committed a serious error by dismissing the writ petition. Learned counsel submitted that Regulation 31(1) of the Regulations contemplates grant of pension in the cases deserving of special consideration and as

the appellant has suffered paralytic stroke, the bank ought to have examined his case on merits and taken a sympathetic view for the purpose of grant of compassionate pension. He further submitted that dismissal of the appellant on the charges of committing financial irregularities cannot justify outright rejection of his claim for pension. Still further, the learned counsel argued that the appellant is entitled to receive gratuity in terms of Section 4 of the 1972 Act and rejection thereof is liable to be invalidated.

We have given serious thought to the arguments of the learned counsel, but have not felt impressed. Regulation 31(1) of the Regulations which provides for sanction of compassionate pension reads as under:

> a) An employee who, is dismissed or removed or terminated from service, shall forfeit his pension.
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> Provided that the authority higher than the authority competent to dismiss or remove or terminate him from service may, if –
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> i) such dismissal, removal, or termination is on or after the 1st day of November 1993 and
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> ii) the case if deserving of special consideration sanction a compassionate allowance not exceeding two thirds of the pension which would have been admissible to him on the basis of the qualifying service rendered up to the date of his dismissal, removal or termination."

Section 4(6) of the Act which too has bearing on the decision of this appeal read as under:

> Notwithstanding anything contained in sub-section (1),-

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer' shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to employee (may be wholly or partially forfeited)

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment".

In our opinion, the expression "deserving of special consideration" appearing in Regulation 31(1)(a)(ii) does not take within its fold the cases of employees found guilty of grave financial irregularities or who may be convicted by the Court for offence involving moral turpitude. The chequered history of the appellant's career shows that in addition to the order of dismissal, he was visited with two major penalties and one minor penalty on the proved charges of financial mis-demeanor. Not only this, he was convicted by Special Judge, C.B.I., Visakhapatnam on the charge of moral turpitude. Therefore, even though the reason contained in letter dated 31.08.2001 for rejecting the appellant's claim for compassionate pension appears to be legally untenable, we do not find any valid ground to

disagree with the learned Single Judge that he is not entitled to claim compassionate pension and gratuity as of right.

Section 4(b), which begins with non-obstante clause, clearly lays down that gratuity is not payable to an employee whose service is terminated for any act which constitutes an offence involving moral turpitude. In the face of statutory prohibition, the Court cannot direct the respondents to pay gratuity to the appellant.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the main appeal, W.A.M.P.No.140 of 2007 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

31.01.2007
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